

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Environment, Great Lakes and Energy

Bureau name:

Air Quality Division

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Rule Set Information:

ARD assigned rule set number:

2023-14 EQ

Title of proposed rule set:

Part 9. Emission Limitation and Prohibitions--Miscellaneous

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

The proposed rule changes adopt federal and other nationally recognized standards by reference to support their use in the Michigan Air Pollution Control Rules (MAPCR). The other nationally recognized standards include some from the American Society for Testing and Materials (ASTM) that are incorporated into many federal standards, and model rules from the Ozone Transport Commission (OTC) which many other states have adopted.

A. Are these rules required by state law or federal mandate?

The proposed rule changes are required to meet the requirements of the federal Clean Air Act for the state of Michigan.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules adopt federal and internationally recognized standards and other applicable guidance documents that do not exceed the federal standards.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules do not exceed standards in similarly situated states. Rule 902 adopts reference material, including federal standards. Similarly situated states adopt standards and reference material using similar language, as needed, to support their rules. In most cases, other similarly situated states also provide information regarding online access and pricing information for their associated reference material, however a few states do not provide the pricing information.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The rules do not exceed standards in states with similar geographic location, topography, natural resources, or economies.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no known laws, rules, or other legal requirements in the state of Michigan that duplicate, overlap, or conflict with these proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The agency minimizes duplication of the references to guidance documents, federal standards, and other applicable material throughout the MAPCR by adopting them by reference and housing the context of those adoptions in R 336.1902.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rule will update reference materials for industry to support compliance with the MAPCR when applicable and needed. The updated standards may require entities to follow new standards, test methodologies, or procedures in some instances.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

There is no expected change in the frequency of targeted behavior expected from these proposed rules. The regulated community should utilize the updated standards in the proposed rules every time they are referenced in the corresponding parts of the rules.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed changes to Part 9 rules will include additional adoptions by reference, will update prices, and will update physical and web addresses of the reference materials. The updated standards may require entities to follow new standards, test methodologies, or procedures in some instances.

C. What is the desired outcome?

The desired outcome of the proposed rules is to provide clarifications of the adoptions by reference housed in R 336.1902 and incorporate additional references to support the MAPCR.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Rule 902 provides updates to reference materials. In the absence of updating these rules, there will be potential confusion in interpreting and accessing material adopted by reference in the MAPCR.

A. What is the rationale for changing the rules instead of leaving them as currently written?

If the proposed rules are left as currently written, material referenced throughout the MAPCR that is not adopted by reference through this proposed rule package will remove Michigan's ability to properly enforce and defend the use of these materials throughout the MAPCR.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Consistency in materials adopted by reference, through Rule 902, will result in less confusion in implementing and complying with the MAPCR. Compliance with the MAPCR will in turn more effectively protect the health, safety, and welfare of Michigan citizens since these rules collectively address air quality.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no obsolete or unnecessary rules in the affected rule set that can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There is expected to be little net increase in fiscal impact on the agency, because the affected sources are currently subject to other regulations and permit requirements and are therefore currently regulated by AQD field staff.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No additional appropriation is expected for these rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary and suitable to properly address adoption of references needed to support the MAPCR and provide appropriate resource information for individuals to attain the reference material. Due to the increases in prices of the reference material, the proposed rules may add an economic burden to individuals purchasing the reference material.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The requirements in the proposed rules are needed to properly adopt reference material into the rules. The increased pricing in some parts of the proposed rules is reasonable since those specific reference materials are needed, and there are no known sufficient alternatives that are less costly to obtain them.

Impact on Other State or Local Governmental Units

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There would be no increases or decreases in the revenues or costs to other state or local governmental units as a result of these rules.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not impose any program, service, duty, or responsibility on any city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not require any actions that governmental units must take to be in compliance with this rule.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriation to state or local governmental units has been made nor has a funding source been provided for any additional expenditures associated with these proposed rules.

Rural Impact

14. In general, what impact will the rules have on rural areas?

In general, these rules will not have any impact on rural areas that is different from other areas of the state.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

No public or private interests in rural areas will be affected by these rules that is different from other areas of the state.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

While the proposed rules do not directly impact the environment, they lead to increased compliance and enforcement of the MAPCR and therefore cleaner air quality.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules do not directly regulate businesses; therefore, incorporation of an exemption for small businesses was not applicable.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not directly regulate businesses, they house adoption by reference information to support other MAPCR.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The proposed rules do not directly affect small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not establish differing compliance or reporting requirements or timetables for small businesses under the proposed rules.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rules follow the compliance and reporting timelines currently required under federal regulations.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules use federal test methods and regulations to establish standards.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

There is no known disproportionate impact on small businesses due to these rules.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules do not require any additional reports by small businesses.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules may increase the cost of compliance for small businesses due to small increases in the cost for some publications, however not all publications had an increase in cost. The average cost increase was \$10.72 and the range in documentation prices is from \$0.00 to \$220.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rules should not cause any additional legal, consulting, or accounting services for small businesses that they would not normally incur in complying with the federal regulations.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The proposed rules should not cause additional costs for small businesses beyond the small increases in publication prices to purchase copies, if applicable.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The agency costs for administering and enforcing the air quality rules are part of the annual operating budget and do not identify the portion attributed to small businesses. There is expected to be little net increase in fiscal impact on the agency because the affected sources are currently subject to other regulations and permit requirements and are therefore currently regulated by AQD field staff. These costs would not change if small businesses were exempt or followed different standards of compliance because the agency would still update the reference information within the proposed rules periodically.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

If small businesses were exempt or held to lesser standards simply by virtue of the size of their business instead of the volume of emissions, there could be negative impacts to the environment and to public health.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

EGLE established workgroups with stakeholders from all across industry as well as consultants who represent small business interests.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Small businesses were involved in the development of the rules mainly through consultants looking out for small business interests.

Cost-Benefit Analysis of Rules (independent of statutory impact)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

These proposed rules update references used in other MAPCR parts, these rule updates may impose minor direct costs to the businesses or groups that utilize the reference materials which had an increase in publication prices. Affected publication prices had an average increase of \$10.72. New reference materials added by the proposed rules ranged from \$0.00 to \$74.00.

Since the proposed rules update references and the regulatory compliance requirements for these documents, if any, are dictated by the portions referenced within the other MAPCR parts, there are no direct compliance costs on businesses or groups by promulgating these rules aside from the publication costs described above. However, businesses or groups are likely to experience indirect compliance costs resulting from the impacts these changes would have on other rule parts.

Statewide compliance costs for the ASTM publications that had newer editions published were not able to be quantified, however EGLE assumed there would be minimal or no cost impacts since there were no significant or contextual changes between editions based on the context provided by the publication webpages.

The estimated cost of compliance for the Control Technique Guidelines (CTG) adopted by reference is estimated to be approximately \$265 and \$1,758 per ton of VOC emission reduction for the Miscellaneous Industrial Adhesive CTG and Miscellaneous Metal and Plastic Parts CTG respectively. At this time, the CTGs only apply to the west Michigan moderate ozone nonattainment areas. The Miscellaneous Industrial Adhesive CTG is expected to reduce volatile organic compound (VOC) emissions by 12.72 tons per year, which equals a cost of compliance of \$3,370.80. The Miscellaneous Metal and Plastic Parts CTG is expected to reduce VOC emissions by 1.36 tons per year, which equals a cost of compliance of \$2,390.88.

The Ozone Transport Commission Model Rules adopted for Consumer Products (CPs), and Architectural and Industrial Maintenance (AIM) coatings have an estimated cost effectiveness of \$3,640 and \$2,240 per ton of VOCs, respectively, based on a study done by the California Air Resources Board. It was estimated, based on population data, that Michigan may see 2,359 tons per year of VOC reduction for CPs and 7,336 tons per year of VOC reduction for AIM coatings. However, these cost estimates are likely very high since companies with national sales will have already reformulated their products to meet the more stringent standards set in California prior to Michigan's adoption, and it also assumes that companies absorbed all costs (none were passed down to consumers).

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The proposed rules reference federal standards used throughout the MAPCR which impact a wide range of industry statewide, including but not limited to coating processes, consumer products, and architectural and industrial maintenance coating manufacturers, that will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules themselves are references to materials adopted throughout the MAPCR. The rules where these references are utilized will dictate needs for new equipment, supplies, labor, accounting, and recordkeeping. Therefore, additional costs from these proposed rules in Part 9 are difficult to quantify. As previously mentioned, many of the revisions will not result in additional costs for businesses and other groups beyond the small increases in publication prices to purchase copies, if applicable. The CTG and OTC Model Rule references adopted within these proposed rules may require businesses to install new control equipment or reformulate their products, adding additional costs.

Businesses impacted by the proposed rules cover a large variety of source types and categories regulated through the AQD. However not all will be impacted by additional costs, generally only ones regulated under the CTG and OTC model rules will see additional costs. An estimated 30% of facilities statewide report VOC emissions, of which only a subset would be impacted by the CTG and OTC model rules.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The proposed rules have small increases in the publication prices for a few existing reference materials and added a few new reference materials, which cost anywhere from \$0.00 to \$74.00. These publications may have been purchased by individuals in the past so it is unknown how many will need to purchase after the promulgation of these rules.

A. How many and what category of individuals will be affected by the rules?

The proposed rules will affect the category of individuals who must comply with the MAPCR.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed changes in rules provide information on how individuals can purchase materials referenced in the MAPCR, if needed. Publication costs range from \$0.00 to \$220.00.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

The proposed rules are not expected to have any cost reductions to businesses, individuals, groups of individuals, or governmental units.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary benefit of the proposed rules is to update adoption by reference information which supports the MAPCR. The secondary or indirect benefit of the proposed rules is the increased level of clarity to help support interpretation of the MAPCR.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules are expected to have negligible effect on business growth and job creation in Michigan.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There is not expected to be a disproportionate impact on any sector because the standards would apply uniformly to the entire regulated community in Michigan.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The agency relied upon statistical analysis to determine averages of the publication price increases and ranges of document prices resulting from the proposed rules.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The estimations were made based on the publication prices listed at the applicable webpages for each reference.

No assumptions were made.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the proposed rules. Since many of the revisions are aimed at improving the overall clarity of the rules and reducing burdens to the regulated community, not pursuing the revisions would result in the lack of clarity that often leads to confusion, inconsistent interpretations, noncompliance, or unnecessary burdens.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments are necessary.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There are no reasonable alternatives, including a private market-based mechanism, to the proposed rules.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The agency utilized previously established organizational structure to update the adoption by reference information; no other significant alternatives were considered.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

MCL 24.245b(1)(c) is not applicable to this proposal of rules.